

SSB 5299 - S AMD 28

By Senators Stevens, Reardon, Esser, Finkbeiner

ADOPTED 02/26/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 80.04.130 and 2001 c 267 s 1 are each amended to read
4 as follows:

5 (1) Except as provided in subsection (2) of this section, whenever
6 any public service company shall file with the commission any schedule,
7 classification, rule, or regulation, the effect of which is to change
8 any rate, charge, rental, or toll theretofore charged, the commission
9 shall have power, either upon its own motion or upon complaint, upon
10 notice, to enter upon a hearing concerning such proposed change and the
11 reasonableness and justness thereof(~~(, and)~~). Pending such hearing and
12 the decision thereon, the commission may suspend the operation of such
13 rate, charge, rental, or toll for a period not exceeding ten months
14 from the time the same would otherwise go into effect(~~(, and)~~). After
15 a full hearing, the commission may make such order in reference thereto
16 as would be provided in a hearing initiated after the same had become
17 effective.

18 (2)(a) The commission shall not suspend a tariff that makes a
19 decrease in a rate, charge, rental, or toll filed by a
20 telecommunications company pending investigation of the fairness,
21 justness, and reasonableness of the decrease when the filing does not
22 contain any offsetting increase to another rate, charge, rental, or
23 toll and the filing company agrees to not file for an increase to any
24 rate, charge, rental, or toll to recover the revenue deficit that
25 results from the decrease for a period of one year.

26 (i) The filing company shall file with any decrease sufficient
27 information as the commission by rule may require to demonstrate the
28 decreased rate, charge, rental, or toll is above the long run
29 incremental cost of the service. A tariff decrease that results in a

1 rate that is below long run incremental cost, or is contrary to
2 commission rule or order, or the requirements of this chapter, shall be
3 rejected for filing and returned to the company.

4 (ii) The commission may prescribe a different rate to be effective
5 on the prospective date stated in its final order after its
6 investigation, if it concludes based on the record that the originally
7 filed and effective rate is unjust, unfair, or unreasonable.

8 ~~((For the purposes of this section, tariffs for the following
9 telecommunications services, that temporarily waive or reduce charges
10 for existing or new subscribers for a period not to exceed sixty days
11 in order to promote the use of the services shall be considered tariffs
12 that decrease rates, charges, rentals, or tolls:~~

13 ~~(a) Custom calling service;~~

14 ~~(b) Second access lines; or~~

15 ~~(c) Other services the commission specifies by rule.~~

16 ~~The commission may suspend any promotional tariff other than those
17 listed in (a) through (c) of this subsection.))~~

18 (b) The commission shall not suspend a promotional tariff. For the
19 purposes of this section, "promotional tariff" means a tariff that, for
20 a period of up to ninety days, waives or reduces charges or conditions
21 of service for existing or new subscribers for the purpose of retaining
22 or increasing the number of customers who subscribe to or use a
23 service.

24 (3) The commission may suspend the initial tariff filing of any
25 water company removed from and later subject to commission jurisdiction
26 because of the number of customers or the average annual gross revenue
27 per customer provisions of RCW 80.04.010. The commission may allow
28 temporary rates during the suspension period. These rates shall not
29 exceed the rates charged when the company was last regulated. Upon a
30 showing of good cause by the company, the commission may establish a
31 different level of temporary rates.

32 ~~((+2))~~ (4) At any hearing involving any change in any schedule,
33 classification, rule, or regulation the effect of which is to increase
34 any rate, charge, rental, or toll theretofore charged, the burden of
35 proof to show that such increase is just and reasonable shall be upon
36 the public service company.

37 ~~((+3))~~ (5) The implementation of mandatory local measured
38 telecommunications service is a major policy change in available

1 telecommunications service. The commission shall not accept for filing
2 a price list, nor shall it accept for filing or approve, prior to June
3 1, 2004, a tariff filed by a telecommunications company which imposes
4 mandatory local measured service on any customer or class of customers,
5 except that, upon finding that it is in the public interest, the
6 commission may accept for filing a price list or it may accept for
7 filing and approve a tariff that imposes mandatory measured service for
8 a telecommunications company's extended area service or foreign
9 exchange service. This subsection does not apply to land, air, or
10 marine mobile service, or to pay telephone service, or to any service
11 which has been traditionally offered on a measured service basis.

12 ~~((4))~~ (6) The implementation of Washington telephone assistance
13 program service is a major policy change in available
14 telecommunications service. The implementation of Washington telephone
15 assistance program service will aid in achieving the stated goal of
16 universal telephone service.

17 ~~((5))~~ (7) If a utility claims a sales or use tax exemption on the
18 pollution control equipment for an electrical generation facility and
19 abandons the generation facility before the pollution control equipment
20 is fully depreciated, any tariff filing for a rate increase to recover
21 abandonment costs for the pollution control equipment shall be
22 considered unjust and unreasonable for the purposes of this section.

23 **Sec. 2.** RCW 80.36.110 and 1997 c 166 s 1 are each amended to read
24 as follows:

25 (1) Except as provided in subsection (2) of this section, unless
26 the commission otherwise orders, no change shall be made in any rate,
27 toll, rental, or charge, that was filed and published by any
28 telecommunications company in compliance with the requirements of RCW
29 80.36.100, except after notice as required in this subsection.

30 (a) For changes to any rate, toll, rental, or charge filed and
31 published in a tariff, the company shall provide thirty days' notice to
32 the commission and publication for thirty days as required in the case
33 of original schedules in RCW 80.36.100(~~(, which)~~). The notice shall
34 plainly state the changes proposed to be made in the schedule then in
35 force, and the time when the changed rate, toll, or charge will go into
36 effect, and all proposed changes shall be shown by printing, filing and
37 publishing new schedules, or shall be plainly indicated upon the

1 schedules in force at the time and kept open to public inspection.
2 Proposed changes may be suspended by the commission within thirty days
3 or before the stated effective date of the proposed change, whichever
4 is later.

5 (b) For changes to any rate, toll, rental, or charge filed and
6 published in a price list, the company shall provide ten days' notice
7 to the commission and customers. The commission shall prescribe the
8 form of notice.

9 (c) The commission for good cause shown may allow changes in rates,
10 charges, tolls, or rentals without requiring the ((~~thirty days~~'))
11 notice and publication provided for in (a) or (b) of this subsection,
12 by an order or rule specifying the change to be made and the time when
13 it takes effect, and the manner in which the change will be filed and
14 published.

15 (d) When any change is made in any rate, toll, rental, or charge,
16 the effect of which is to increase any rate, toll, rental, or charge
17 then existing, attention shall be directed on the copy filed with the
18 commission to the increase by some character immediately preceding or
19 following the item in the schedule, which character shall be in such a
20 form as the commission may designate.

21 (2)(a) A telecommunications company may file a tariff that
22 decreases any rate, charge, rental, or toll with ten days' notice to
23 the commission and publication without receiving a special order from
24 the commission when the filing does not contain an offsetting increase
25 to another rate, charge, rental, or toll, and the filing company agrees
26 not to file for an increase to any rate, charge, rental, or toll to
27 recover the revenue deficit that results from the decrease for a period
28 of one year.

29 (b) A telecommunications company may file a promotional offering to
30 be effective, without receiving a special order from the commission,
31 upon filing with the commission and publication. For the purposes of
32 this section, "promotional offering" means a tariff or price list that,
33 for a period of up to ninety days, waives or reduces charges or
34 conditions of service for existing or new subscribers for the purpose
35 of retaining or increasing the number of customers who subscribe to or
36 use a service.

1 **Sec. 3.** RCW 80.36.320 and 1998 c 337 s 5 are each amended to read
2 as follows:

3 (1) The commission shall classify a telecommunications company as
4 a competitive telecommunications company if the services it offers are
5 subject to effective competition. Effective competition means that the
6 company's customers have reasonably available alternatives and that the
7 company does not have a significant captive customer base. In
8 determining whether a company is competitive, factors the commission
9 shall consider include but are not limited to:

10 (a) The number and sizes of alternative providers of service;

11 (b) The extent to which services are available from alternative
12 providers in the relevant market;

13 (c) The ability of alternative providers to make functionally
14 equivalent or substitute services readily available at competitive
15 rates, terms, and conditions; and

16 (d) Other indicators of market power which may include market
17 share, growth in market share, ease of entry, and the affiliation of
18 providers of services.

19 The commission shall conduct the initial classification and any
20 subsequent review of the classification in accordance with such
21 procedures as the commission may establish by rule.

22 (2) Competitive telecommunications companies shall be subject to
23 minimal regulation. Minimal regulation means that competitive
24 telecommunications companies may file, instead of tariffs, price lists
25 ~~((that shall be effective after ten days' notice to the commission and~~
26 ~~customers. The commission shall prescribe the form of notice)).~~ The
27 commission may also waive other regulatory requirements under this
28 title for competitive telecommunications companies when it determines
29 that competition will serve the same purposes as public interest
30 regulation. The commission may waive different regulatory requirements
31 for different companies if such different treatment is in the public
32 interest. A competitive telecommunications company shall at a minimum:

33 (a) Keep its accounts according to regulations as determined by the
34 commission;

35 (b) File financial reports with the commission as required by the
36 commission and in a form and at times prescribed by the commission;

37 (c) Keep on file at the commission such current price lists and
38 service standards as the commission may require; and

1 (d) Cooperate with commission investigations of customer
2 complaints.

3 (3) When a telecommunications company has demonstrated that the
4 equal access requirements ordered by the federal district court in the
5 case of U.S. v. AT&T, 552 F. Supp. 131 (1982), or in supplemental
6 orders, have been met, the commission shall review the classification
7 of telecommunications companies providing inter-LATA interexchange
8 services. At that time, the commission shall classify all such
9 companies as competitive telecommunications companies unless it finds
10 that effective competition, as defined in subsection (1) of this
11 section, does not then exist.

12 (4) The commission may revoke any waivers it grants and may
13 reclassify any competitive telecommunications company if the revocation
14 or reclassification would protect the public interest.

15 (5) The commission may waive the requirements of RCW 80.36.170 and
16 80.36.180 in whole or in part for a competitive telecommunications
17 company if it finds that competition will serve the same purpose and
18 protect the public interest.

19 **Sec. 4.** RCW 80.36.330 and 1998 c 337 s 6 are each amended to read
20 as follows:

21 (1) The commission may classify a telecommunications service
22 provided by a telecommunications company as a competitive
23 telecommunications service if the service is subject to effective
24 competition. Effective competition means that customers of the service
25 have reasonably available alternatives and that the service is not
26 provided to a significant captive customer base. In determining
27 whether a service is competitive, factors the commission shall consider
28 include but are not limited to:

29 (a) The number and size of alternative providers of services;

30 (b) The extent to which services are available from alternative
31 providers in the relevant market;

32 (c) The ability of alternative providers to make functionally
33 equivalent or substitute services readily available at competitive
34 rates, terms, and conditions; and

35 (d) Other indicators of market power, which may include market
36 share, growth in market share, ease of entry, and the affiliation of
37 providers of services.

1 (2) When the commission finds that a telecommunications company has
2 demonstrated that a telecommunications service is competitive, the
3 commission may permit the service to be provided under a price list
4 (~~effective on ten days notice to the commission and customers. The~~
5 ~~commission shall prescribe the form of notice~~). The commission may
6 adopt procedural rules necessary to implement this section.

7 (3) Prices or rates charged for competitive telecommunications
8 services shall cover their cost. The commission shall determine proper
9 cost standards to implement this section, provided that in making any
10 assignment of costs or allocating any revenue requirement, the
11 commission shall act to preserve affordable universal
12 telecommunications service.

13 (4) The commission may investigate prices for competitive
14 telecommunications services upon complaint. In any complaint
15 proceeding initiated by the commission, the telecommunications company
16 providing the service shall bear the burden of proving that the prices
17 charged cover cost, and are fair, just, and reasonable.

18 (5) Telecommunications companies shall provide the commission with
19 all data it deems necessary to implement this section.

20 (6) No losses incurred by a telecommunications company in the
21 provision of competitive services may be recovered through rates for
22 noncompetitive services. The commission may order refunds or credits
23 to any class of subscribers to a noncompetitive telecommunications
24 service which has paid excessive rates because of below cost pricing of
25 competitive telecommunications services.

26 (7) The commission may reclassify any competitive
27 telecommunications service if reclassification would protect the public
28 interest.

29 (8) The commission may waive the requirements of RCW 80.36.170 and
30 80.36.180 in whole or in part for a service classified as competitive
31 if it finds that competition will serve the same purpose and protect
32 the public interest."

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1 On page 1, line 1 of the title, after "Relating to" strike the
2 remainder of the title and insert "tariff and price list notices; and
3 amending RCW 80.04.130, 80.36.110, 80.36.320, and 80.36.330."

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